

Congress of the United States
Washington, DC 20515

May 15, 2019

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Washington, D.C. 20535

Dear Attorney General Barr and Director Wray,

We are deeply concerned by growing reports of war crimes being committed by warring parties in Libya. The Libyan peace process and political transition are of high strategic interest to the United States and our allies. War crimes would represent a particularly acute threat to Libyan stability by deepening the intractability of the conflict and damaging the chances of peaceful resolution. Therefore, we respectfully ask you to investigate all allegations of war crimes in Libya that could warrant prosecution.

In particular, we have noted with concern the recent reports of alleged war crimes and torture committed by forces under the command of United States citizen Khalifa Haftar. Mr. Haftar leads a coalition of militias in Libya that has been accused of violating provisions of the United States War Crimes Act, the United States Torture Act, the Geneva Conventions, and internationally-recognized human rights law. We respectfully call on you to investigate Mr. Haftar and his subordinates for potential violations of the War Crimes Act, 18 U.S. Code § 2441, and the Torture Act, 18 U.S. Code § 2340A.

In our estimation, the War Crimes Act was enacted by Congress specifically for circumstances such as these. A United States citizen is directly undermining United States policy in Libya, including U.S. support for a United Nations-led mediation process and the internationally-recognized government of Libya. At the same time, Mr. Haftar's forces are alleged to have committed war crimes and inflicted unnecessary suffering and cruelty during the course of military operations. In so doing, Mr. Haftar's forces could be deepening the intractability of the conflict and pushing it toward a more acute level of brutality and bloodshed.

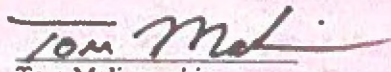
In addition to direct commission, knowledge of and involvement by Mr. Haftar in war crimes by his subordinates would itself constitute a war crime under standard principles of complicity. As noted by former Defense Department Special Counsel Ryan Goodman, the U.S. Government's Supplemental Filing in the Guantanamo cases drew from the international criminal tribunal that prosecuted former Liberian President Charles Taylor for war crimes. The international tribunal in that case held that the *mens rea* for aiding and abetting war crimes requires only knowledge, not purpose. The judgment wrote that the accused "was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator."¹

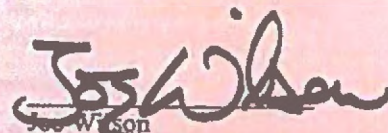
A brief selection of alleged crimes relevant to this case include:

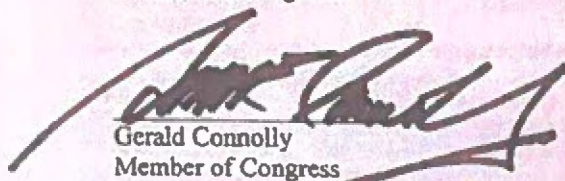
- In a 2015 video depicting a speech to troops under his command, Mr. Haftar appears to give a command to take no prisoners.ⁱⁱ The "denial of quarter" is prohibited under the U.S. War Crimes Act's provisions on murder in non-international armed conflict.ⁱⁱⁱ
- Forces under Mr. Haftar's command have been repeatedly accused of indiscriminate shelling of civilian areas, actions prohibited under the U.S. War Crimes Act.^{iv}
- A key subordinate of Mr. Haftar, Mahmoud Mustafa Busayf Al-Werfalli, was issued an arrest warrant by the International Criminal Court for crimes including participation in or ordering of execution of 33 detainees.^v Subsequent evidence indicates the massacre could have been ordered by Mr. Haftar himself.^{vi} This would violate the U.S. War Crimes Act's prohibition of murder in non-international armed conflict.^{vii}
- Forces under the command of Mr. Haftar have been accused of torture, according to an early January filing with the International Criminal Court by independent Libyan group Human Rights Solidarity.^{viii}
- United Nations reporting from 2018 also indicates that Mr. Haftar's forces are accused of widespread torture in the Kuweifiya prison.^{ix}

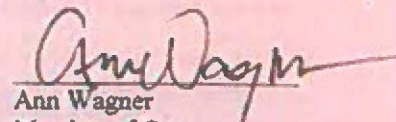
The commission of war crimes by anyone, anywhere ultimately threatens both the well-being of American citizens at home and the safety and well-being of American civilians and troops in conflict zones. This underlies the motivation and history of U.S. laws governing war crimes. The commission of war crimes by a United States citizen is thus a particular stain on our national character and limits the ability of the President of the United States to foster just and dignified ends to worldwide conflicts. As such, we urge you to investigate in due course these war crimes allegedly committed by Mr. Haftar and his subordinates. Furthermore, we respectfully request that you provide a briefing on the initial findings of your staff related to these matters within 120 days.

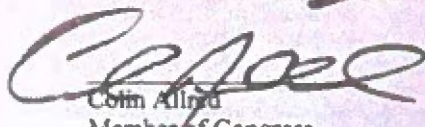
Sincerely,

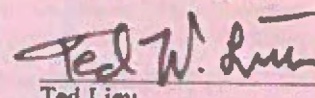

Tom Malinowski
Member of Congress


Josh Wilson
Member of Congress


Gerald Connolly
Member of Congress


Ann Wagner
Member of Congress


Colin Allread
Member of Congress


Ted Lieu
Member of Congress



David Trone
Member of Congress

CC:

The Honorable Michael Pompeo, Secretary of State
Teresa McHenry, Chief, Human Rights and Special Prosecution Section, Department of Justice
Kelley Eckels Currie, Acting Head, Office of Global Criminal Justice, Department of State
Mark Schaffer, Chief, Human Rights Violators and War Crimes Unit, Department of Homeland Security
Maureen Schulz, Chief, FBI International Human Rights Unit
The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary
The Honorable Doug Collins, Ranking Member, House Committee on Judiciary
The Honorable Elliot Engel, Chairman, House Committee on Foreign Affairs
The Honorable Michael McCaul, Ranking Member, House Committee on Foreign Affairs

ⁱ "The Law of Aiding and Abetting (Alleged) War Crimes." JustSecurity.org, 1 Sept 2016, <https://www.justsecurity.org/32656/law-aiding-abetting-alleged-war-crimes-assess-uk-support-saudi-strikes-yemen/>

ⁱⁱ "Smoking Gun Videos Emerge: US Citizen, Libyan Warlord Haftar Ordering War Crimes." JustSecurity, 14 Dec. 2017, www.justsecurity.org/45094/hafter-smoking-gun-videos-emerge-citizen-libyan-warlord-khalifa-haftar-ordering-war-crimes/

ⁱⁱⁱ "18 U.S. Code § 2441 - War Crimes." Legal Information Institute, Legal Information Institute, www.law.cornell.edu/uscode/text/18/2441.

^{iv} "Smoking Gun Videos Emerge: US Citizen, Libyan Warlord Haftar Ordering War Crimes." JustSecurity.org, 14 Dec 2017, www.justsecurity.org/45094/hafter-smoking-gun-videos-emerge-citizen-libyan-warlord-khalifa-haftar-ordering-war-crimes/.

^v International Criminal Court. The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli. 15 Aug 2017, www.icc-cpi.int/CourtRecords/CR2017_05031.PDF.

^{vi} Whiting, Alex. "New ICC Arrest Warrant Indirectly Implicates Libyan Warlord, a U.S. Citizen." JustSecurity.org, 29 Jan 2019, www.justsecurity.org/44409/icc-arrest-warrant-indirectly-implicates-libyan-warlord-u-s-citizen/.

^{vii} "18 U.S. Code § 2441 - War Crimes." Legal Information Institute, Legal Information Institute, www.law.cornell.edu/uscode/text/18/2441.

^{viii} Trew, Bel. "Libyan Commander Courted by European Countries Accused of War Crimes." The Independent, Independent Digital News and Media, 31 Jan. 2019, www.independent.co.uk/news/world/middle-east/libya-haftar-war-crimes-derna-middle-east-icc-human-rights-torture-murder-a8755981.html.

^{ix} Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya. United Nations Human Rights High Commissioner, Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya, www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf.

Congress of the United States
Washington, DC 20515

June 6, 2019

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Secretary Pompeo:

As members of the House Committee on Foreign Affairs, we write to express our concerns regarding the conflict in Libya. We are alarmed by the ongoing military offensive in Tripoli by Khalifa Haftar and his Libyan National Army (LNA), the immediate threats to civilians, and the likelihood of a protracted conflict that will further destabilize the region. At this critical moment in the conflict, we urge the administration to address confusion over U.S. policy in Libya by clearly rejecting the military offensive and bolstering the UN-led peace process.

Haftar launched his attack on Tripoli on April 4, days before a United Nations national conference to set a timeline for a political transition and elections. Instead of political participation and negotiations, Haftar chose to continue a military campaign.

We are concerned that the current clashes are recreating the same security vacuum in Libya that ISIS exploited in 2014 when it established its most powerful affiliate outside of Syria and Iraq. The fighting is distracting Libyan counterterrorism partners and threatens our ability to identify and eliminate ISIS threats. We have already seen ISIS carry out six attacks since the conflict started. The best way to prevent further terrorist risks is to reach a ceasefire and return to a political process.

As a result of the fighting, more than 560 people have been killed, 2,800 injured, and more than 82,000 people have been forced to flee their homes. There are more than 3,000 detained refugees and migrants trapped in detention centers inside combat zones at grave risk. The United Nations has recorded violations of international humanitarian law, including indiscriminate shelling of civilian neighborhoods and militia attacks against detained refugees and health workers trying to treat the wounded.

In addition, we are alarmed that the war could also jeopardize Libya's vital oil production and exports. In previous conflicts, Libyan armed groups have seized and shut down vulnerable oil facilities. They have also tried to illegally sell oil outside of the recognized authority of the National Oil Corporation under the GNA in Tripoli. Aside from harming Libya's economy and the well-being of its citizens, such disruptions could negatively affect prices on the global market.

Disseminated by Mercury Public Affairs, LLC, a registered foreign agent, on behalf of the Government of National Accord Libya, Office of the Prime Minister. More information is on file with the Department of Justice, Washington, DC.

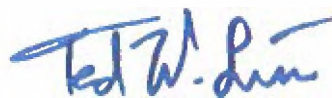
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As you stated on April 7, "There is no military solution to Libya's conflict." The further importation of increasingly sophisticated arms by both sides of this conflict will only result in greater instability, threats to oil facilities and vital civilian infrastructure, and human suffering for the Libyan people.

Unfortunately, a generic read-out of President Trump's phone call with Haftar on April 15 has led to perceived uncertainty regarding the U.S. position. Libyan armed actors are now using that confusion over U.S. policy as justification to continue the conflict, further jeopardizing prospects for a political settlement and threatening regional stability. We therefore request that you publicly clarify that the U.S. opposes a military solution in Libya and that the U.S. condemns all actors undermining stability and perpetuating violence. We further urge you to call for a ceasefire and work with international partners to ensure its implementation, publicly reaffirm support for the U.N.-led peace talks, and exert U.S. diplomatic pressure to encourage a return to negotiations. The U.S. must exercise leadership to prevent further deterioration.

Thank you for your attention to this important matter.

Sincerely,



Ted W. Lieu
Member of Congress



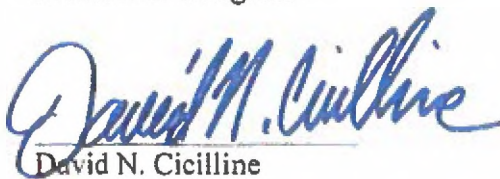
Joe Wilson
Member of Congress



Ted Deutch
Member of Congress



Amr Wagner
Member of Congress



David N. Cicilline
Member of Congress



Abigail Spanberger
Member of Congress



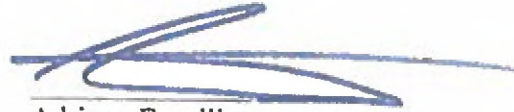
David Trone
Member of Congress



Ilhan Omar
Member of Congress



Tom Malinowski
Member of Congress



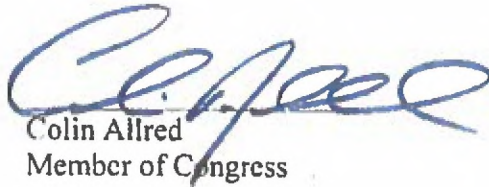
Adriano Espaillat
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Dean Phillips
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Colin Allred
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